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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JEROME RHINES,

Defendant and Appellant.

H025684

(Santa Clara County

Super. Ct. No. CC117676)

Following a court trial, appellant was convicted of one count of infliction of corporal injury upon a spouse and one count of assault with a deadly weapon. (Pen. Code, §§ 273.5, subd. (a); 245, subd. (a)(1).) The trial court acquitted appellant of one count of criminal threats. (Pen. Code, § 422.) The court found true enhancements regarding the infliction of great bodily injury and personal use of a knife. The court found that appellant had suffered four prior convictions within the meaning of Penal Code sections 667, subdivisions (a) and (b), and 667.5, subdivision (b). The trial court sentenced appellant to a prison term of 25 years to life with an additional 18-year consecutive term. Appellant contends that reversal is required because he did not personally and expressly waive his right to a jury trial, that he was thus denied due process, and that the evidence is insufficient to support the court's true finding on the enhancement allegation regarding one of his prior felony convictions. We reverse.

Appellant contends and respondent concedes, "the record does not reflect appellant's personal and express waiver of his right to a jury trial." *People v. Collins* (2001) 26 Cal.4th 297 and *People v. Ernst* (1994) 8 Cal.4th 441 recognize that a defendant's constitutional right to a jury trial must be expressly waived. In *Ernst*, the court held that the failure to obtain an express jury waiver from the defendant as required by the California Constitution was not subject to harmless error review. Such a failure constitutes structural error that is reversible per se. (*Ernst, supra*, at pp. 448-449.) Here, neither the clerk's transcript nor the reporter's transcript indicates that appellant personally and expressly waived his right to a jury trial. Appellant's conviction must be reversed. In light of this disposition, we do not reach appellant's remaining contentions.

Disposition

The judgment is reversed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.